Office-Supreme Court, U.S.
FILED
JAN 29 1981
ALEXANDER L. STEVAS,
CLERK

80-1281

No.

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1980

SEA-LAND SERVICE, INC.,

Petitioner,

v.

FEDERAL MARITIME COMMISSION and
UNITED STATES OF AMERICA,

Respondents.

ON WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Is the Federal Maritime Commission authorized by the Shipping Act, 1916, to promulgate a final rule which requires neutral, independent self-policing entities to place self-policing documents at the disposal of the Commission?

REFERENCE TO PARTIES BELOW

The following were parties in the proceedings below:

Sea-Land Service, Inc., petitioner below (Parents: Sea-Land Industries, Inc. which in turn is wholly owned by R.J. Reynolds Industries, Inc.; Affiliates: Sea-Land Industries (USA) Inc. and Sea-Land Industries, Ltd.)

Gulf European Freight Association,
Continental/U.S. Gulf Freight Association,
U.K./U.S.A. Westbound Rate Agreement,
Australia/Eastern U.S.A. Shipping Conference,
"8900" Lines,
Iberian/U.S. North Atlantic Westbound Freight Conference,
Marseilles North Atlantic U.S.A. Freight Conference,
Med-Gulf Conference,
Mediterranean–North Pacific Coast Freight Conference,
New Zealand Rate Agreement,
North Atlantic Mediterranean Freight Conference,
South Atlantic/Spanish, Portuguese, Moroccan and Mediterranean Rate Agreement,
Spanish Eastbound Freight Agreement,
U.S. Atlantic & Gulf/Australia–New Zealand Conference, and

West Coast of Italy, Sicilian and Adriatic Ports/ North Atlantic Range Conference. The above were intervenors below.

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ON WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

Petitioner Sea-Land Service, Inc. hereby respectfully prays that a writ of certiorari issue to review the opinion and judgment of the United States Court of Appeals for the District of Columbia issued September 11, 1980, and the order of that Court issued October 31, 1980, denying a petition for rehearing and suggestion for rehearing *en banc*.

REFERENCE TO OPINIONS BELOW

The order of the Federal Maritime Commission was affirmed by the United States Court of Appeals for the District of Columbia Circuit in *Sea-Land Service, Inc. v. Federal Maritime Commission and United States of America*, No. 79-1062 (D.C. Cir. September 11, 1980), dissenting opinion filed by Chief Judge Markey (sitting by designation).[1] On October 31, 1980, the Court of Appeals denied a petition for rehearing and suggestion for rehearing *en banc*.[2] Neither is officially reported.

The Federal Maritime Commission orders are as follows:

(a) General Order 7, Docket 73-64, Reconsideration and Modification of Final Rules served September 14, 1978,[3] and

(b) General Order 7, Docket 73-64, Affirmance of Final Rules served December 18, 1978.[4]

The Final Rule is published at 46 CFR Part 528.

STATEMENT OF JURISDICTION

The judgment of the United States Court of Appeals for the District of Columbia Circuit was entered September 11, 1980, and the denial of the petition for rehearing and suggestion for rehearing *en banc* was entered October 31, 1980.

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[1] Appendix A

[2] Appendices E and F

[3] Appendix B

[4] Appendix C

The Supreme Court's jurisdiction is invoked pursuant to 28 U.S.C. §1254(1) which authorizes review of the judgments of the Courts of Appeals by writ of certiorari.

STATUTES INVOLVED

The full text of Section 15 of the Shipping Act, 1916, 46 U.S.C. §814, is set forth at Appendix G hereto. In pertinent part, this statute provides:

> The Commission shall disapprove any such agreement, after notice and hearing, on a finding of inadequate policing of the obligations under it, or of failure or refusal to adopt and maintain reasonable procedures for promptly and fairly hearing and considering shippers' requests and complaints.

The full text of Section 21 of the Shipping Act, 1916, 46 U.S.C. §820, is set forth at Appendix G hereto. In pertinent part, this statute provides:

> That the board may require any common carrier by water, or other person subject to this Act, or any officer, receiver, trustee, lessee, agent, or employee thereof, to file with it any periodical or special report, or any account, record, rate, or charge, or any memorandum of any facts and transactions appertaining to the business of such carrier or other person subject to this act.

Section 1 of the Shipping Act, 1916, 46 U.S.C. §801, provides a definition of terms used in the Act. Among the terms defined are:

> The term "common carrier by water" means a common carrier by water in foreign commerce or a common carrier by water in interstate commerce on the high seas or the Great Lakes on regular routes from port to port.

and

> The term "other person subject to this act" means any person not included in the term "common carrier by water," carrying on the business of forwarding or furnishing wharfage, dock, warehouse, or other terminal facilities in connection with a common carrier by water.

Section 43 of the Shipping Act, 1916, 46 U.S.C. §841a, provides, in its entirety, that:

> The Commission shall make such rules and regulations as may be necessary to carry out the provisions of this Act.

The full text of the provision of the Federal Maritime Commission final rule at issue, 46 CFR Part 528, is set forth as Appendix B hereto.[5] That provision states in part, at §528.1(c), that:

> (c) No self-policing system shall contain provisions which purport to:
>
> (1) deny access to or copies of any self-policing records, statistics, reports, or other information (including the identity of members) in contravention of a duly issued order of the Federal Maritime Commission (or a Commission employee with delegated authority to issue such orders). . . . [46 CFR §528.1(c)]

STATEMENT OF THE CASE

Section 15 of the Shipping Act, 1916, 46 U.S.C. §814 ("Act"), requires every common carrier by water to file with the Federal Maritime Commission ("Commission") every agreement with every other such carrier which,

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[5]Henceforth references shall be to Appendix ("App.") and page number.

among other things, fixes or regulates transportation rates or competition.

In 1961, Section 15 was amended by Public Law 87-346 (75 Stat. 762) ("1961 Amendments"), Section 2 of which provides that:

> The Commission shall disapprove [a Section 15 agreement], after notice and hearing, on a finding of inadequate policing of the obligations under it, or failure or refusal to adopt and maintain reasonable procedures for promptly and fairly hearing and considering shippers' requests and complaints.

Section 7 of the 1961 Amendments amended the Act by inserting a new Section 43 (46 U.S.C. §841a) which states that: "The Commission shall make such rules and regulations as may be necessary to carry out the provisions of this Act."

After enactment of the 1961 self-policing requirement, the Commission used its new rulemaking power and issued General Order 7 ("G.O. 7") (46 CFR Part 528) which prescribed standards for self-policing by ocean common carriers.

This Petition for Writ of Certiorari involves the promulgation of a final rule by the Commission which amended G.O. 7.

That rule, as adopted in the Commission's September 14, 1978, "Reconsideration and Modification of Final Rules", provide in part at Section 528.1(c), that:

> (c) No self-policing system shall contain provisions which purport to:
>
> (1) deny access to or copies of any self-policing records, statistics, reports, or other information (including the identity of members) in contra-

> vention of a duly issued order of the Federal Maritime Commission (or a Commission employee with delegated authority to issue such orders). . . . [App. B, p. 82a]

This will henceforth be referred to as the "access to documents" provision.

Petitioner Sea-Land Service, Inc. ("Sea-Land"), a party to the Commission proceeding, requested reconsideration of this provision of the rule for the reason that it had not been present in an earlier version of the final rule and that therefore Sea-Land, as well as the other interested parties, had been denied a reasonable opportunity to submit comments. The Commission was requested to reopen the proceeding for the limited purpose of reconsidering the access to documents issue.

Sea-Land's request was denied by the Commission's December 18, 1978, "Affirmance of Final Rules."

On Appeal to the United States Court of Appeals for the District of Columbia Circuit pursuant to the Hobbs Act, 28 U.S.C. §2342 et. seq., Sea-Land challenged the adequacy of the rulemaking procedures, the statutory authority of the Commission to issue the access to documents provision, and the applicability of Section 21 of the Act to self-policing entities. That court affirmed the Commission order on September 11, 1980. On petition for rehearing and suggestion for rehearing *en banc*, Sea-Land urged that the access to documents provision was contrary to the intent of the 1961 amendments to Section 15 of the Act. Sea-Land repeated its argument that while the Commission was seeking to extend regulatory powers made applicable only to "every common carrier by water, or other person subject to this Act. . . ." it has never been determined, either judicially

or by Commission interpretation, that an independent self-policing entity is either a common carrier by water or another person subject to the Act. Rehearing and rehearing *en banc* were denied on October 31, 1980.

REASONS RELIED ON FOR THE ALLOWANCE OF THE WRIT

1. The Decision Of The Court of Appeals In Upholding Section 528.1(c) Of The Commission's Rules Is Inconsistent With the Express Intent Of Congress In Enacting The 1961 Amendments.

Section 528.1(c) of the Commission's rules, the access to documents provision, was promulgated by the Commission using the authority granted to it by Section 43 of the Act in order to effectuate the self-policing requirement added to Section 15 of the Act by the 1961 Amendments. Self-policing was undertaken in explicit recognition that the statutory scheme enacted by Congress to regulate ocean shipping in United States foreign commerce was inadequate unless coupled with a system whereby carrier conferences, whose agreements must be approved by the Commission under Section 15, were required to police member compliance with the terms of the agreement.[6]

The access to documents rule might appear to impose an obligation on carrier conferences, because it is the conferences which devise the self-policing systems. However, in point of fact, the actual limitation is on the self-policing entity itself. Thus, the rule begins: "No self-policing system shall contain provisions which pur-

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[6]Hearings on H.R. 4299, Before the Special Subcomm. on Steamship Conferences of the House Comm. on Merchant Marine and Fisheries, 87th Cong., 1st Sess., at 140-44, 158-64 (1961).

port to: (1) deny access. . . ." It is not the conferences or their carrier members which are precluded from denying access; rather it is the independent self-policing entity engaged[7] by the conference which may not deny access.

When enacting the 1961 Amendments to Section 15 of the Act, Congress did not specify the exact kind of self-policing system it had in mind. Indeed, Congress purposely withheld from the Commission the authority for advance prescription of specific self-policing systems and procedures.[8] Thus, Congress never considered the access to documents provision found in Section 528.1(c) of the rule. However, Congress did consider, and reject, a similar provision which would have amended Section 15 of the Act *inter alia* to require that conference ocean carrier members agree to produce documents to the Commission upon lawful order. While the carrier production of documents provision differs from the access to documents provision in issue, because the obligation was the carriers' and not that of the self-policing entity, the rationale adopted by the Senate in rejecting the provision is enlightening with regard to the views of Congress on issues which bear equally on self-policing.

As reported by the House of Representatives, H.R. 6775 amended Section 15 of the Act with regard to carrier conference agreements as follows:

> No such agreement shall be approved unless it shall (1) designate a person upon whom service of process

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[7]Except as provided under §528.3(b)(3) and §528.6, which establish narrow exceptions, the entities whose services are engaged by a conference are outside concerns. [App. B, p. 87a, 93a]

[8]S. Rep. No. 860, 87th Cong., 1st Sess. pp. 17-18 (1961); Hearings on H.R. 6775 Before the Merchant Marine and Fisheries Subcomm. of the Senate Comm. on Commerce, 87th Cong., 1st Sess. at 553 (1961).

> may be made within the United States which will be effective against every signatory to such agreement, and (2) contains provisions that every signatory shall provide records or other information, wherever located, required by any order of the Board which contains the minimum notice provisions required by the Administrative Procedures Act (5 U.S.C. 1001 and the following). No conference agreement shall be approved unless the Board finds that it contains effective provisions for policing the obligations under it. The Board shall disapprove any such agreement, after reasonable notice, on a finding of inadequate policing of the obligations under it. [H.R. 6775, 87th Cong., 1st Sess. (1961)]

The Senate subcommittee print deleted these proposed amendments of Section 15 relating to the designation of agent/production of documents.[9] The Senate Report explained the reasons why these two provisions had been deleted:

> Your committee deleted from the bill a provision which would have amended section 15, Shipping Act, 1916, to require that all agreements approved under that section (1) designate an agent in the United States for the receipt of process effective against the signatories to the agreement; and (2) provide that every such signatory shall furnish the Commission "records or other information," wherever located, in compliance with Commission orders. This provision was so vigorously opposed, and for good reasons, by practically all interested parties except the Federal Maritime Board, that we

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[9]Subcommittee Print, H.R. 6775, Merchant Marine and Fisheries Subcomm., Senate Comm. on Commerce, 87th Cong., 1st Sess. August 8, 1961.

deleted it. We discuss its deletion in more detail later in this report. [S. Rep. No. 860, 87th Cong., 1st Sess. at 17 (1961)]

The Senate Report also considered questions raised by H.R. 6775, including a question concerning the implications for future conference stability if the designation of agent/production of documents requirements proposed by the House became law:

> Will conferences dissolve if it is required that as a condition precedent to Commission approval each conference's organic agreement must (1) designate an agent in the United States to receive service of process effective against all members, and (2) contain provisions that every signatory must provide records or other information, wherever located when required by Commission order?
>
> The House bill proposed an amendment to section 15 Shipping Act, 1916, which sharply raised this question. That bill also contained a related proposed amendment to section 21, Shipping Act, 1916, which would apply to every common carrier by water in foreign commerce and would limit the service of process provision to actions brought by or on behalf of the United States.
>
> Both proposed amendments raised a storm of protests. The State Department urged this committee in the strongest terms possible to delete these provisions because of their irreparable damaging effect upon important considerations of foreign policy. Twelve friendly maritime nations filed protests with your committee through the Department of State. Every American-and foreign-flag conference lines urged their deletion. Only the Department of Commerce/Federal Maritime Board favor these provisions. Apparently the regulatory agency feels that so long as it is required to enforce the Shipping

Act here and abroad with no distinction between those transactions which are in our import commerce and those which are in our export commerce, it must be given service-of-process powers and document-production powers similar to that contained in the House bill. Your committee believes, however, that 'saying' the Commission has such powers, which obviously it cannot enforce effectively against the nationals of unwilling foreign governments, would result only in such provisions being enforceable effectively against American-flag lines, thereby prejudicing them in relation to their relatively unreachable foreign-flag competitors.

To date two U.S. courts of appeal have held that under the present section 21, Shipping Act, 1916, the Commission may lawfully order foreign flag ocean common carriers serving U.S. ports, inbound or outbound, to furnish documents in compliance with lawful section 21 orders, even though the documents are located in foreign countries. How the United States will be able to enforce such orders in the face of directives not to produce from friendly maritime nations (Belgium, Italy, Japan, the Netherlands, and the United Kingdom) is a question of great foreign policy importance. Certainly, we would only muddy the waters and do violence to our foreign policy were we to leave such provisions in the bill. Furthermore, we are convinced that if we did so a number of steamship conferences would have to dissolve since a number of foreign lines would be compelled by their governments to withdraw, rather than submit to the receipt-of-process and document-production pledge required by the language of the bill. [*Id.* at 24-25]

The Conference Report acceded to the deletions made in the Senate. (H.R. Rep. No. 1247, 87th Cong., 1st Sess. (1961))

Thus, the legislative history reveals that Congress was unwilling to require that, as a condition of approval, Section 15 agreements, contain an undertaking that conference members would make their records available upon lawful Commission production order. Congress took this stance with full knowledge of recent judicial affirmance of the Commission's extraterritorial reach under Section 21 of the Act. Significantly, the Congress expressed these views at the time (and in the same legislation) in which it was amending Section 15 to require conference self-policing.

Sea-Land respectfully submits that, if Congress refused to require, as a condition of Section 15 approval, that persons subject to the Act make documents available to Commission process, it could not have intended otherwise with respect to self-policing entities—which are not persons subject to the Act. The status under the Act of self-policing entities is developed in the following section:

2. The Decision Of The Court Of Appeals Conflicts With Decisions Of This Court And Other Federal Courts In Holding That The Commission May Require Access To Self-Policing Documents From Independent Self-Policing Entities.

The Opinion of the Court of Appeals upholds the validity of the access to documents provision—Section 528.1(c) of the Commission's rule. In finding that there is no inconsistency between the legislative history of the 1961 amendments and Section 528.1(c), the Opinion reveals what Sea-Land respectfully submits is a fatal flaw.

As to the legislative history recited, *supra*, the Opinion concedes that:

> We are aware, of course, that Congress declined to grant the Commission the power to obtain access to

> self-policing records wherever located as a precondition to section 15 endorsement. . . . [App. A, p. 33a]

S. Rep. No. 860, quoted *supra* is clearly in accord.

However, the Opinion concludes that this presents no limitation on Section 528.1(c):

> We perceive no incompatibility between the legislative history of the 1961 amendments and section 528.1(c). Contrary to petitioners' construction of the rule, it does not require the self-policing entities affirmatively to place self-policing records at the Commission's disposal as a condition to Commission approval of the conference agreements—such a requirement clearly would run contrary to the legislative history of the 1961 amendments. Instead, section 528.1(c) provides only that the conferences may not include in their agreements any provision that automatically would preclude the Commission, through whatever tools it may have, from obtaining self-policing records and documents. [App. A, p. 38a, footnote omitted]

In the second sentence of the preceeding quotation, the Opinion speaks of a requirement imposed on a self-policing entity. However, in the last sentence the requirement becomes one imposed on conferences. The distinction is a vital one. As will be developed, Sea-Land has objected to Section 528.1(c) because it broadens the Commission's powers over a person not subject to the Act. Moreover, the quotation also implies that the negative form of the access to documents requirement is acceptable while, when stated in the affirmative, it is "contrary to the legislative history. . . ."

The confusion which Sea-Land respectfully submits is reflected in this quotation finds its expression in the

Opinion's holding that Section 528.1(c), as enforced against self-policing entities, affords the Commission no broader access to documents:

> In other words, we interpret the rule [§528.1(c)] to mean that the conference agreements may not prohibit the members or the self-policing entities from making self-policing information available to the Commission, whether this information is submitted voluntarily or otherwise obtained by the Commission through whatever leverage the Commission may be able to exert. The rule on its face does not purport to authorize broader access by the Commission to documents than is already recognized under existing law. . . . [App. A, p. 39a]

The references in the two preceeding quotations to the Commission's use of "whatever tools it may have" (App. A, p. 38a) and "whatever leverage the Commission may be able to exert" (App. A, p. 39a) suggests strongly that the Opinion has equated its Section 528.1(c) power with its pre-existing Section 21 power. Indeed, when assessing the legislative history of the 1961 Amendments, the Opinion notices the reference in S. Rep. 860 (*supra*) to "two circuit court decisions, one of which was written by this court, that had interpreted section 21 of the Shipping Act to compel ocean common carriers subject to the Act to produce documents located outside the territorial confines of the United States." (App. A, p. 36a) The Opinion further notes that Congress declined the opportunity presented to it to amend Section 21 and lessen the Commission's reach over documents. (App. A, p. 37a)

From the foregoing, Sea-Land submits that the only available conclusion that may be drawn from the Opinion is a determination by the Court of Appeals that Section 528.1(c) does not "broaden" the Commission's authority

that previously inhered in Section 21 of the Act. By its express terms Section 21 applies only to a "common carrier by water, or other person subject to this Act."[10] It has never been determined, either judicially or by Commission interpretation, that an independent self-policing entity is either a common carrier by water or another person subject to the Act. Reference to the definitions presented in Section 1 of the Act reveals the basic dissimilarity. Under the guise of rulemaking the Commission has undertaken a significant broadening of its own powers beyond those limited to persons subject to the Act. This distinction is fully consistent with the action of the 87th Congress which, as the Opinion conceded (App. A, p. 33a), "declined to grant the Commission the power to obtain access to self-policing records wherever located as a precondition to Section 15 endorsement. . . ." Like Section 21, Section 15 is also limited in application to "every common carrier by water, or other person subject to this Act. . . ."

It is the clear distinction between the extent of the Commission's reach under Section 15 and 21 of the Act and the attempt to require access to documents from "persons" not subject to the Act that evinces a clear conflict between the Opinion of the Court of Appeals and other decisions.

The Opinion (App. A, p. 37a, fn. 37) cites *Montship Lines, Ltd. v. Federal Maritime Board*, 295 F.2d 147 (D.C. Cir. 1961) and *Kerr Steamship Co. v. United States*, 284 F.2d 61 (2d Cir. 1960), *vacated on other grounds*, 369 U.S. 422 (1962). Both cases interpret the Commission's extraterritorial jurisdiction as exercised in document requests to common carriers issued pursuant to

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[10]App. G, p. 107a

Section 21 of the Act. Reference to these cases was made in the legislative history of the 1961 Amendments to the Act—specifically that portion in which the Senate deliberated on the access to documents provision. The Opinion indicates that the Senate's awareness of this case law in 1961 serves to explain the Senate's "state of mind" when it deleted from the House of Representatives' bill a provision that would have required conference members to furnish documents, wherever located, upon lawful Commission order.

However, the recognition given these cases in the legislative history is of no assistance in justifying Section 528.1(c) of the Rule. They afford no basis for a finding of compatibility between the two. *Kerr* and *Montship* are limited because Section 21 is limited. Several courts have held that the Commission may apply Section 21 only against those subject to its jurisdiction. *See,* for example, *Pacific Coast European Conference v. Federal Maritime Commission,* 359 F.2d 416, 418 (9th Cir. 1966).

In *Far East Conference v. Federal Maritime Commission,* 337 F.2d 146 (D.C. Cir. 1964), *cert. denied* 379 U.S. 991 (1965), the question was presented whether Section 21 applied to conferences as such. The court stated:

> There is a contention, however, that a conference is not an entity to which a Section 21 order may be applied. That section is applicable to "any common carrier by water" or "other person subject to this Act," or "any officer, receiver, trustee, lessee, agent or employee" thereof. The fact is that Conferences are in many respects agents of the carriers which compose them. If the Conferences are in possession of the data, and the data is otherwise validly sought, it may not be refused on the theory [Sic] the

> Conferences are not answerable to a Section 21 order. [*Id.* at 150]

The holding in *Far East Conference* hinged on the finding of an agency relationship between the conference (not of itself a person subject to the Act) and the carriers (which are). No such analogy can be made with respect to self-policing entities which are required by the Commission's Rule to be "independent" (46 CFR §528.3)—that is, the agent of neither the conference nor the carriers.

The independent nature of a self-policing entity has been the subject of analysis by the Court of Appeals for the District of Columbia Circuit. *States Marine, Inc. v. Federal Maritime Commission,* 376 F.2d 230 (D.C. Cir. 1967) concerned the proposal that appeals from a ruling of a self-policing entity be taken to an arbitrator. The Court of Appeals excepted to the view that such an appeal should properly be taken to the Commission itself for the reason that appeal to the Commission:

> [W]ould involve the Commission in the task of examining all the evidence presented to the Neutral Body. . . . This, of course, is not the responsibility assigned the Commission by Section 15. Section 15 authorizes the Commission to "disapprove, cancel or modify any agreement," not to sit in judgment of the day-to-day operations carried out under the agreement. Moreover, to place the Commission in the role of an on-going appellate panel, intimately involving it in a case-by-case review of the Conferences' Neutral Body system, would hardly be consistent with Congress' intent that the Conferences engage in *self*-regulation. [*Id.* at 242; Emphasis in original]

Thus, by virtue of its very nature, not only is an independent self-policing entity not itself a common

carrier by water or other person subject to the Act, it cannot be considered an agent of such a person. The conclusion that results from this analysis is that a self-policing entity is not a proper target of a Commission Section 21 document request. While in mandating self-policing in 1961 Congress intended to "in nowise diminish the powers, duties, and responsibilities" of the Commission (*Opinion,* App. A, p. 9a quoting from H.R. Rep. No. 498, 87th Cong., 1st Sess. 10-11 (1961)), preclusion of Commission access to self-policing documents will not have this result because the Commission cannot reach by a Section 21 order a "person" which is not subject to the Act.[11]

Sea-Land contends here not with access to documents but with access to documents from a self-policing entity. The Opinion states, as to this, that:

> Diligent performance of the Commission's duties to monitor the conferences' policing attempts and to enforce the Shipping Act demands that the Commission keep itself informed of actual occurrences and practices in the ocean shipping industry. [App. A, p. 41a]

The desire to be informed cannot justify the application of discovery powers beyond the limits intended by Congress to persons not subject to the Act.

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[11]Interestingly, and in connection with this point, no evidence was submitted below to suggest that existing Commission document discovery powers were inadequate.

CONCLUSION

Section 528.1(c) appears in the Rule as a prohibition which assumes an erroneous presumption—it assumes that the Commission has the authority to compel access to self-policing documents. Sea-Land respectfully submits that the Shipping Act, 1916 establishes no such authority. In effect, Section 528.1(c) prohibits self-policing entities from doing something which the Commission is powerless to require affirmatively. The provision in actuality provides that self-policing entities may not deny the Commission a power which it does not possess. We urge that a writ of certiorari should issue to review the Opinion and judgment of the United States Court of Appeals for the District of Columbia Circuit.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that today, this 29th day of January, 1981, I have mailed three copies of the foregoing Petition for Writ of Certiorari and of the separately filed Appendix by United States mail, first class postage prepaid or by personal delivery, to each of the following:

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